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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS-NOP-14-0062; NOP-14-01]

National Organic Program: Notice of Final Guidance for Accredited Certifying Agents and Certified Operations on Natural Resources and Biodiversity Conservation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability of final guidance.

SUMMARY: The National Organic Program (NOP) is announcing the availability of a final guidance document intended for use by accredited certifying agents and certified operations. The guidance document is entitled: Natural Resources and Biodiversity Conservation (NOP 5020).

This guidance document is intended to inform the public of NOP's current thinking on this topic.

DATES: The final guidance document announced by this notice is effective on [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

On December 29, 2014, the National Organic Program (NOP) published in the Federal Register a notice of availability with request for public comment on a draft guidance document addressing Natural Resources and Biodiversity Conservation for Certified Organic Operations and Accredited Certifying Agents (ACA's) (79 FR 78025). The NOP selected the topic for the

draft guidance in response to a May 2009 National Organic Standards Board (NOSB) request that AMS clarify the requirements and limitations codified at 7 CFR 205.200.¹

The general natural resources and biodiversity conservation requirement of the U.S. Department of Agriculture (USDA) organic regulations at 7 CFR 205.200 requires operations to “maintain or improve the natural resources of the operation, including soil and water quality.” Section 205.2 of the regulations defines “natural resources of the operation” as the “physical, hydrological, and biological features of a production operation, including soil, water, wetlands, woodlands, and wildlife.” The May 2009 NOSB recommendation asked the NOP to establish: 1) consistent discussion and review of biodiversity protection and enhancement in all certified operations’ organic system plans; 2) increased education and information for certified operations, inspectors, and certifiers; 3) uniformity of inspection and certification procedures with regard to how certified operations implement the biodiversity standards; 4) incorporation of biodiversity standards into the procedures for accreditation and certifier audits; and 5) use of materials evaluation criteria that foster consideration of biodiversity conservation when adding or deleting materials from the National List of Allowed and Prohibited Substances. The draft NOP guidance can be viewed on the NOP website at <http://www.ams.usda.gov/sites/default/files/media/NOP-5020.pdf>. The 60-day comment period closed on February 27, 2015.

NOP received approximately 964 individual comments on the draft guidance document. Based upon the comments received, the NOP revised and is publishing a final guidance document on Natural Resources and Biodiversity Conservation (NOP 5020). The guidance

¹ NOSB Recommendation: Implementation of Biodiversity Conservation in Organic Agriculture Systems. Issued on March 5, 2009. Available on the NOP website at: <http://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Rec%20Biodiversity.pdf>

document includes an appendix (NOP 5020-1) where the NOP provides a complete discussion of the comments received and the rationale behind any changes made to the guidance documents.

This final guidance provides examples of production practices that support conservation principles and demonstrate compliance with 7 CFR 205.200. This guidance also clarifies: 1) the certified organic operator's responsibility to select, carry out, and record production practices that "maintain or improve the natural resources of the operation;" 2) the accredited certifying agent's (certifier) responsibility to verify operator compliance with this requirement; and 3) how domestic organic operations that participate in a USDA Natural Resources Conservation Service (NRCS) program and the NOP can reduce their paperwork burdens. This final guidance is available from the NOP through "The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations". This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the USDA organic regulations. The current edition of the Program Handbook is available online at <http://www.ams.usda.gov/rules-regulations/organic/handbook>.

II. Significance of Guidance

This final guidance document is being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432-3440). The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. This guidance represents the NOP's current thinking on the topic. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform method for operations to comply with the Organic Foods Production Act (OFPA) and the USDA organic regulations that can

reduce the burden of developing their own methods and simplify audits and inspections.

Alternative approaches that can demonstrate compliance with the OFPA, as amended (7 U.S.C. 6501-6522), and its implementing regulations are also acceptable. As with any alternative compliance approach, the NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources, and to ensure the proposed alternative approach complies with the OFPA and its implementing regulations.

Electronic Access

Persons with access to Internet may obtain the final guidance at the NOP's website at <http://www.ams.usda.gov/nop>. Request for hard copies of the final guidance document can be obtained by submitting a written request to the person listed in the FOR FURTHER INFORMATION CONTACT section of this Notice.

Authority: 7 U.S.C. 6501-6522.

Dated: January 13, 2016.

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Agricultural Marketing Service

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